

## OFFICIAL TITLE AND SUMMARY

## PREPARED BY THE ATTORNEY GENERAL

## REFERENDUM ON AMENDMENT TO INDIAN GAMING COMPACT.

A “Yes” vote approves and a “No” vote rejects, a law that:

- Ratifies amendment to existing gaming compact between the state and Pechanga Band of Luiseño Mission Indians; amendment would permit tribe to operate 5,500 additional slot machines;
- Omits certain projects from scope of California Environmental Quality Act; amendment provides for Tribal Environmental Impact Report and intergovernmental procedure to address environmental impact;
- Revenue paid by tribe to be deposited into General Fund; tribe would make \$42,500,000 annual payment and pay percentage of revenue generated from the additional slot machines to the state.

## SUMMARY OF LEGISLATIVE ANALYST’S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Net increase in annual state government revenues probably in the tens of millions of dollars, growing over time through 2030.
- For local governments in Riverside County, potential net increase of revenues due to economic growth and potential increased payments from the tribe to offset higher costs.

## ANALYSIS BY THE LEGISLATIVE ANALYST

## BACKGROUND

This measure relates to the gambling operations of the Pechanga Band of Luiseño Indians, a tribe based near Temecula in Riverside County.

## Existing Tribal-State Compact

*1999 Compact With the Pechanga Tribe.*

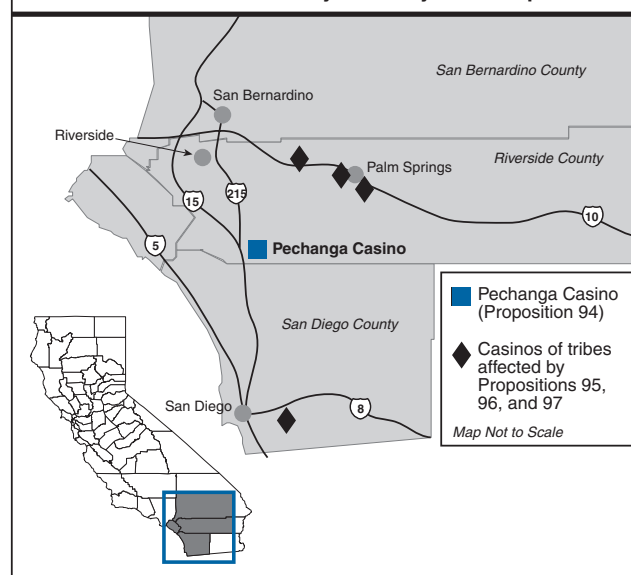
The State Constitution allows the Governor to negotiate agreements—known as compacts—with Indian tribes. A compact authorizes a tribe to operate casinos with certain slot machines and card games. The Constitution gives the Legislature the power to accept or reject compacts. In 1999, the Governor and 58 tribes, including the Pechanga tribe, reached agreements on casino compacts (known as the “1999 compacts”), and the Legislature passed a law approving them. The U.S. government—which reviews all compacts under federal law—then gave the final approval to these compacts. All of the 1999 compacts contain similar provisions giving tribes exclusive rights to operate certain gambling activities in California. Several tribes have negotiated amendments to their 1999 compacts in recent years. However, for most of

the 58 tribes—including the Pechanga tribe—the 1999 compacts remain in effect today.

***Pechanga Tribe’s Casino Has About 2,000 Slot Machines.*** The Pechanga tribe’s lands are in Riverside County near Interstate 15 and the

Figure 1

## Locations of Tribes Affected by February 2008 Propositions



City of Temecula—just north of the San Diego County line. The location of the tribe’s casino is shown in Figure 1. The Pechanga tribe’s casino facility includes about 2,000 Nevada-style slot machines, the maximum allowed under the tribe’s 1999 compact. In addition, the tribe currently operates over 1,500 other machines (such as bingo-style machines) which are not governed by compacts.

***Pechanga Tribe Now Pays About \$29 Million Per Year to the State.*** Under federal law, tribes do not pay most state and local taxes. Under the 1999 compacts, however, the Pechanga tribe and other tribes agreed to make annual payments to two state government funds.

- ***Revenue Sharing Trust Fund (RSTF).*** A tribe’s payments to the RSTF are based on a portion of the slot machines it operates. Currently, the Pechanga tribe pays about \$300,000 per year to this fund. The state distributes \$1.1 million per year from the RSTF to each of the 71 federally recognized Indian tribes in California that have no casino or a small casino (less than 350 slot machines).
- ***Special Distribution Fund (SDF).*** A tribe’s payments to the SDF are based on the revenue of its slot machines and the number of the machines that the tribe operated on September 1, 1999. Currently, the Pechanga tribe pays around \$28.3 million per year to this fund. (Annual revenues to the fund have been about \$130 million.) The state spends moneys from the SDF for purposes related to casino compacts, such as: (1) covering shortfalls in the RSTF, (2) funding programs that assist people with gambling problems, (3) paying costs of state agencies that regulate tribal casinos, and (4) making grants to local governments affected by tribal casinos.

***State Regulates Certain Casino Activities and Payments.*** The 1999 compacts give the state certain powers to regulate tribal casinos. State officials may visit casino facilities, inspect casino records, and verify required payments under the compacts. Two entities in state government—the California Gambling Control Commission and the Department of Justice—perform the regulatory duties described in the compacts. Most of the information and

documents received by the state is required to be kept confidential.

***Requirements to Address Environmental Impacts of Casinos.*** The California Environmental Quality Act (CEQA) requires state and local governments to review significant negative environmental impacts of many projects that they fund or allow to be built. Under CEQA, there is a process to see that these negative impacts are reduced or avoided where feasible. Currently, neither the state nor a tribe is subject to CEQA’s requirements when a casino is built. Casino projects, however, may affect the environment both on tribal lands and outside of tribal lands. Under the 1999 compacts, when tribes build, expand, or renovate casinos, they must prepare a report on the significant negative environmental impacts of the project and offer the public a chance to comment. They must also make a “good faith effort” to reduce or avoid those impacts outside of their reservations.

***Union Status of Casino Employees.*** Under the 1999 compacts, tribes agreed to certain requirements in the area of labor relations. Unions that want to organize employees of casinos must be given access to the employees. Both the tribe and the union can express their opinions so long as they do not threaten employees, use force against them, or promise benefits. Before a union can represent employees in negotiations with the tribe, it must win a secret ballot election of the employees. (A few later compacts have a different process for determining union representation.) No union currently represents the Pechanga tribe’s casino employees.

***Current Compact Expires in 2020.*** The 1999 compact with the Pechanga tribe expires on December 31, 2020.

## Recent Agreements and Legislation

***Governor and Tribe Negotiated Compact Amendment in 2006.*** In August 2006, the Governor and the Pechanga tribe reached an agreement to change the tribe’s 1999 compact. (This proposed agreement is called the “compact amendment.”) The compact amendment would allow the tribe to expand its gambling operations significantly. It would also require the tribe, among other things, to pay more money to the state. In June 2007, the Governor and the tribe

also signed a memorandum of agreement (MOA) to take effect at the same time as the compact amendment. The MOA addresses various casino operational issues.

**Legislature Passed Bills Related to the Compact Amendment in 2007.** In June 2007, the Legislature passed Senate Bill 903, which approves the compact amendment with the Pechanga tribe. The Legislature also passed a bill approving MOAs with the Pechanga tribe and three other tribes. The Governor signed the bills in July 2007.

**Compact Approval Measure Put on Hold by This Referendum.** The bill approving the compact amendment with the Pechanga tribe would have taken effect on January 1, 2008. However, this proposition, a referendum on SB 903, qualified for the ballot. As a result, SB 903 was put “on hold,” and the compact amendment and MOA can take effect only if this proposition is approved by voters.

## PROPOSAL

If approved, this proposition allows SB 903, the compact amendment, and the MOA with the Pechanga tribe to go into effect, subject to approval by the U.S. Department of the Interior. Major provisions of these agreements

are summarized in Figure 2 and in the analysis below. If this proposition is rejected, the tribe could continue to operate its casino under the 1999 compact.

## Compact Amendment

**Number of Nevada-Style Slot Machines Could Increase.** The compact amendment allows the Pechanga tribe to operate up to 7,500 Nevada-style slot machines at its casinos—up from 2,000 under the 1999 compact.

**Increase in Payments to the State.** Under the compact amendment, the Pechanga tribe’s payments to the state would increase significantly. Its payments to the RSTF would increase to \$2 million per year—up from the current annual level of about \$300,000. The tribe’s annual payments to the SDF—currently around \$28 million—would end. For the first time, however, the tribe would make payments to the General Fund, the state’s main operating account. (The General Fund receives about \$100 billion each year from all sources, and its funds can be used by the Legislature for any purpose.) The Pechanga tribe’s annual payment to the General Fund would total at least \$42.5 million under the compact amendment. In addition to this minimum payment, the tribe

Figure 2

### Key Facts About Current and Proposed Compacts With Pechanga Tribe

	Current— Under 1999 Compact	Proposed— If Voters Approve Proposition 94
Casinos allowed on tribal lands in Riverside County	2	2
Nevada-style slot machines allowed	2,000	7,500
Payments to the state	Currently, around \$29 million per year to two state funds. No payments to the state General Fund.	At least \$44.5 million per year. More payments when the tribe expands its casino operations. Nearly all of the money would go to the General Fund.
Environmental impacts and increased costs of local services	<ul style="list-style-type: none"> <li>• Tribe must make good faith effort to reduce or avoid significant negative environmental impacts off of tribal lands.</li> <li>• State uses funds paid by tribes to make grants to local governments.</li> </ul>	<p>Before commencing specified casino projects, tribe and county and/or city would either:</p> <ul style="list-style-type: none"> <li>• Enter into enforceable agreement to reduce or avoid significant environmental impacts and to pay for increased public service costs, or</li> <li>• Go to arbitration to settle disagreements on these issues.</li> </ul>
Expiration date	December 31, 2020	December 31, 2030

would pay to the General Fund an annual amount equal to 15 percent of the net revenues of the next 3,000 slot machines it adds to its casinos after the compact amendment takes effect. (In general terms, a slot machine's net revenue is the amount of money that gamblers put in the slot machine minus the money paid out as prizes from the machine.) If the tribe operates more than 5,000 slot machines, it would pay the General Fund an annual amount equal to 25 percent of the net revenues of those additional slot machines.

**Covering Shortfalls in the RSTF.** The compact amendment requires the state to use a part of the tribe's payments to the General Fund if they are needed to cover shortfalls in the RSTF—the state fund that gives each tribe with no casino or a small casino \$1.1 million each year.

**Tribal Payments to State May Decline in Certain Instances.** Under the compact amendment, if the state allows a nontribal entity to operate slot machines or certain card games in nearby areas, the tribe's required payments to the state would be significantly reduced or eliminated.

**Addressing Environmental Impacts and Increased Costs of Local Services.** The compact amendment expands requirements in the 1999 compact for the Pechanga tribe to address significant environmental impacts of its casinos that occur outside of the tribe's reservation. Before the tribe builds or expands a casino, it would be required to prepare a draft report on these impacts and offer the public a chance to comment. The tribe then would prepare a final report on environmental impacts—including responses to public comments. Next, the tribe would have to begin negotiating enforceable agreements to address these impacts with (1) Riverside County and (2) any city that includes or is adjacent to the proposed facility (it appears that the City of Temecula would meet this definition). Under these agreements, significant environmental impacts outside of the reservation must be reduced or avoided, where feasible. The agreements also must provide for local governments to receive "reasonable compensation" for increased public service costs due to the casino, such as

costs of public safety and gambling addiction programs. The tribe, county, or city can demand binding arbitration in cases where the parties cannot come to an agreement. When an arbitrator reaches a decision, it would become part of the required agreements with the local governments described above.

**Other Provisions.** The compact amendment includes numerous other provisions concerning casino operations. Any parts of the 1999 compact that are unchanged by the amendment (such as the requirements in the area of labor relations) would remain in effect.

**Extends Expiration Date to 2030.** The compact amendment would extend the tribe's compact by ten years—to December 31, 2030.

## Memorandum of Agreement

**Various Aspects of Casino Operations Addressed.** The MOA establishes certain requirements for the tribe's casino operations, including:

- **Independent Audits Required to Be Given to the State.** The 1999 compact requires tribes to have an independent accountant audit casino operations each year. The MOA includes an explicit requirement for the tribe to provide a copy of this audit to state regulators on a confidential basis.
- **Casino Operating Guidelines.** The MOA requires the Pechanga tribe to maintain certain minimum internal control standards (MICS) at its casinos. The MICS are operating guidelines that cover such things as individual games, customer credit, and money handling. Recently, a court ruled that a federal agency has no authority to regulate certain MICS at tribal casinos. The MOA gives state regulators the ability to enforce the Pechanga tribe's compliance with MICS so long as the federal agency lacks this authority.
- **Problem Gambling Provisions.** The MOA requires the tribe to take several actions to identify and assist problem gamblers.
- **Child and Spousal Support Orders.** The MOA requires the tribe to comply with state court and agency orders to garnish wages of casino employees for child, family, and spousal support payments.



## FISCAL EFFECTS

The fiscal effects of the compact amendment and MOA on the state and local governments would depend on several factors, including:

- The extent to which the tribe expands its casino operations.
- The success of the tribe in (1) attracting more out-of-state visitors and (2) getting Californians to spend more of their “gambling dollars” within the state instead of in Nevada or elsewhere out of state.
- General trends in the California casino industry.
- The extent to which Californians redirect spending from businesses on nontribal lands to businesses—including gambling—on tribal lands.
- The way that tribes, state regulators, the federal government, and the courts interpret the compact amendment and MOA.

The major fiscal effects for the state and local governments are discussed below. The nearby box discusses fiscal issues concerning the

other tribal casino measures on this ballot: Propositions 95, 96, and 97.

### State and Local Governments

***Increased Payments to the State.*** Under the compact amendment, the Pechanga tribe’s payments to the state would increase significantly. Currently, the Pechanga tribe pays around \$29 million per year to two state funds. Under the compact amendment, the tribe’s payments to the state would total at least \$44.5 million per year. If the tribe adds thousands of Nevada-style slot machines at its casinos, its annual payments to the state eventually would increase by tens of millions of dollars. This could result in a total payment of well over \$100 million annually by 2030. Virtually all of the new payments would go to the state’s General Fund.

***Decreases in Other State and Local Revenues.*** The compact amendment would result in reductions of other revenues received by the state and local governments:

- ***Effects on Taxable Economic Activity.*** As tribal gambling expands, Californians would

### Other Tribal Casino Measures on the Ballot

***Four Compact Amendments Are on This Ballot.*** Three other tribes’ compact amendments are addressed in Propositions 95, 96, and 97. The locations of the tribes’ casinos are shown in Figure 1.

***The Four Measures Would Expand the Industry Significantly.*** If voters approve all four of the propositions, California’s casino industry—currently with over 60,000 slot machines at about 58 facilities—probably would expand significantly. Combined, the four measures would allow four Southern California tribes to expand their casinos with up to 17,000 new slot machines. Other tribes also are planning casino expansions.

***State Government Fiscal Effects.*** If voters approve the four propositions, overall annual payments from the four tribes to the state would total at least \$131 million. As these tribes expand their casinos, they would make additional payments to the state’s General Fund. There would be reductions in other state revenues partially offsetting these increased payments. Our best estimate is that annual state revenues over the next few years would increase by a net amount of less than \$200 million. Over the longer run, the net annual increase could be in the low to mid hundreds of millions of dollars, lasting until 2030.

***Local Government Fiscal Effects.*** If voters approve the four propositions, there could be the following primary fiscal effects on local governments:

- ***Economic Activity.*** There could be a significant net increase in economic activity affecting Riverside County (where three of the four tribes are located) and cities near some of the tribes’ casinos.
- ***Tribal Payments.*** Local governments in Riverside County and San Diego County could receive increased payments from the tribes to offset all or a portion of higher service costs.

spend more of their income at tribal facilities, which are exempt from most types of state and local taxes. This means Californians would spend less at other businesses that *are* subject to state and local taxes—for example, hotel, restaurant, and entertainment businesses off of tribal lands. This would result in reduced tax revenues for the state and local governments.

- **Reduced Gambling-Related Revenues.** The state and local governments currently receive revenues from other forms of gambling—such as the California Lottery, horse racing, and card rooms. Expanded gambling on tribal lands could reduce these other sources of state and local revenues. In addition, as the Pechanga tribe expands its casino operations, it may attract customers who otherwise would go to the casinos of other California tribes. If this occurs, these other tribes would receive fewer revenues from their casinos and could pay less to the state under the terms of their compacts.
- **Less Money in the SDF.** If voters approve this proposition, the Pechanga tribe would stop making payments to the SDF. (Other propositions on this ballot also would reduce payments to the SDF.) Under current law, the first priority use of money in the SDF is to cover shortfalls in the RSTF so that tribes with no casino or a small casino receive a \$1.1 million annual payment. If there is still not enough money to cover RSTF shortfalls, the compact amendment requires the state to use a part of the Pechanga tribe's payment to the General Fund to make up the difference. In addition, other programs (such as grants to local governments) funded by the SDF might need to be reduced and/or paid for from the General Fund.

While these revenue decreases are difficult to estimate, the combined impact would be in the tens of millions of dollars annually.

## Riverside County

**Local Economic Effects.** Under the compact amendment, the Pechanga tribe may expand its casino operations significantly on its lands near Temecula in Riverside County. The tribe's expanded customer base would include people coming to Riverside County from other counties or outside the state to gamble and purchase goods and services. This spending would occur both on tribal lands and in surrounding areas. As a result, local governments in Riverside County would likely experience net growth in revenues from increased economic activity. The amount of this growth is unknown.

**Increased Payments to Cover Higher Costs of Local Services.** As casinos expand, surrounding local governments often experience higher costs to provide services, such as for public safety, traffic control, and gambling addiction programs. In certain instances under the compact amendment, the tribe would be required to negotiate with Riverside County and any affected city government to pay for the higher costs of local services and significant environmental impacts.

## Summary of Fiscal Effects

Currently, the Pechanga tribe pays the state about \$29 million per year. If voters approve this proposition and the Pechanga tribe expands its gambling operations significantly, the tribe's annual payments to the state would increase by tens of millions of dollars, potentially resulting in total payments to the state of well over \$100 million annually by 2030. Reductions in taxable economic activity, other gambling-related revenues, and the tribe's payments to the SDF would partially offset these increased payments. In total, annual state revenues probably would increase by a net amount of tens of millions of dollars, growing over time through 2030.

For local governments in Riverside County, there would likely be a net increase of revenues due to economic growth, and there could be increased payments from the tribe to offset higher service costs.